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No.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

IN RE

JACK M. LEVIN,

Attorney-Petitioner.

APPENDICES TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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APPENDICES TO THE PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

APPENDIX A

In re Jack M. LEVIN, Attorney,
Respondent.

No. 58459.

Supreme Court of Illinois.

April 4, 1984.

Rehearing Denied
June 4, 1984.

Attorney disciplinary proceeding was brought. The Supreme Court, Simon, J., held that neglect of various legal matters and misleading both clients and other attorneys into believing that clients' rights were being actively protected warrants suspension for three years.

Respondent suspended.

Underwood, J., dissented and filed an opinion in which Thomas J. Moran, J., joined.

* * *

SIMON, Justice:

Respondent, Jack M. Levin, was charged by the Administrator of the Attorney Registration and Disciplinary Commission with neglect of various legal matters entrusted to him, and with misrepresentation, dishonesty and deceit. The Hearing Board found respondent guilty of neglect, but not misrepresentation, and recommended his suspension from the practice of law for two years. The Review Board affirmed and approved the recommendation. The Administrator filed exceptions, urging that the respondent's conduct involved misrepresentation, and that

he should be disbarred. Respondent also excepted, urging that the suspension recommended was too severe a sanction.

Respondent has been licensed to practice law in Illinois since 1960, and has been previously disciplined for conduct similar to that alleged here. (*In re Levin* (1979), 77 Ill.2d 205, 32 Ill.Dec. 870, 395 N.E.2d 1374.) Respondent engages in a high volume, personal injury trial practice. During the time period involved here, respondent was an individual practitioner who accepted some cases directly from clients, but primarily accepted referrals from other lawyers of cases at all stages, from initiation to shortly before trial. Many of the cases involved dubious liability and small sums of money.

Respondent admits most of the allegations in the complaint. He admits neglect, but he denies any dishonesty, intentional misrepresentation, or any pattern of negligence. Instead, he attributes his conduct to the pressures of a high volume, high intensity practice where he assumed sole responsibility for everything he undertook, and to personal problems including marital difficulties and his daughters' health. Respondent claims to have made a number of changes in his practice to insure that this type of neglect cannot recur.

Count I involves respondent's representation of Manuel Santillanes for injuries suffered in a barroom altercation. Although respondent was employed within one month of the occurrence, suit was not filed until after the one-year dramshop and two-year personal injury statutes of limitations had expired, and proper service was never completed. One year after the complaint had been dismissed, respondent met with Santillanes and advised him that he was negotiating a settlement with the insurance company. Respondent did not tell Santillanes that the complaint had

been dismissed. When Santillanes investigated and discovered the dismissal, he filed a malpractice suit against respondent. The resulting $10,000 judgment remains unsatisfied.

Count II involves respondent's representation of Christina Gomez, who was 10 years old when she fell through a hole in a fire escape which provided access to the apartment in which she lived. Although respondent notified the realty company of his representation of Christina Gomez, no suit was filed. When asked about the case, respondent explained that he was trying to settle the matter out of court. After Josephine Carerra, Christina Gomez' mother, initiated disciplinary action, respondent wrote a letter indicating that he would no longer represent Christina Gomez and that she must file suit within two years. Carrera testified that she tried repeatedly to obtain the file from respondent in order to engage another attorney, but she was unsuccessful.

Count III involves a claim by Jarryl Monegain against his own insurer when that company refused to pay for the property damage arising from an automobile accident. The claim was referred by attorney David Feldman after he had been unsuccessful in negotiating with the insurer. When Monegain was unable to contact respondent, he reported this to Feldman. In writing and in person Feldman urged respondent to contact the client and to institute arbitration proceedings. When Feldman wrote respondent, confirming his belief that a lawsuit had been filed, respondent did not deny this understanding. No suit or arbitration proceedings were ever initiated by respondent; Feldman eventually filed a lawsuit.

Count IV involved a case referred by attorney Charles May. It arose from Matilda Nelson's difficulties when she was accused of shoplifting in a college bookstore. A civil

suit against the store employees had already been filed by another attorney when respondent accepted the case. Respondent failed to comply with an order to file an amended complaint and the case was dismissed. He did not disclose the dismissal to the client, but indicated in response to her inquiries that he would resolve the matter. Respondent did not reply to many of the client's attempts to communicate with him. Nelson's claim is now barred.

Count V involves a wrongful death and dramshop claim referred by attorney Bernard Davis on behalf of Anne Fouts, whose husband was killed in an automobile accident. After respondent filed an appearance in the pending case, he was given 14 days to file an amended complaint, but never did. The complaint was dismissed when respondent failed to appear at a hearing. His motion to vacate the dismissal was never served on the defendants. The Fouts' claim is now barred. For more than two years respondent did not tell the client that her claim had been dismissed, but wrote letters indicating that he would be going to the courthouse to work on the case. There were some early settlement negotiations in which respondent urged Mrs. Fouts to reject a low offer. Davis has now settled Mrs. Fouts' malpractice claim against him, but respondent has not settled with her.

The final count involves the automobile accident claim instituted by Yvonne and Bernard Perry. The Perrys were referred to respondent by attorney Jack Marino, and their case was dismissed after they failed to appear at numerous scheduled depositions. The Perrys were aware of only two of these and had explained their inability to attend in advance. When the Perrys did not hear about a further deposition date and respondent did not return their calls, they filed a disciplinary complaint. Respondent

now claims that he settled the case but he did not contact the Perrys. The Perrys eventually retained a new attorney, who settled the case for $1,500.

The first question is whether the Hearing Board erred in not finding dishonesty or misrepresentation in respondent's conduct. A finding by the Hearing Board of the Disciplinary Commission is entitled to the same weight as that of any other fact finder. (*In re Kink* (1982), 92 Ill.2d 293, 301, 65 Ill.Dec. 895, 442 N.E.2d 206; *In re Feldman* (1982), 89 Ill.2d 7, 10, 59 Ill.Dec. 103, 431 N.E.2d 388.) We give considerable deference to findings of fact by the Hearing Board, but we are not required to accept them when the Board's conclusion is not established by clear and convincing evidence. (*In re Kink* (1982), 92 Ill.2d 293, 301, 65 Ill.Dec. 895, 442 N.E.2d 506.) Although the Board found that there was no misrepresentation here, we conclude from the record that respondent's conduct went beyond mere neglect for failing to notify clients and referring attorneys that cases had been dismissed or that the statute of limitations had run, and instead reassuring them that he was working on the cases or that a suit had been filed, respondent misled both clients and attorneys into believing that he was actively protecting the clients' rights. Respondent's misstatements were designed to reassure clients and attorneys, leaving them sanguine with respect to the respondent's efforts on their behalf, so that they would not be alerted to take affirmative steps to protect the clients' interests before it was too late to do so. Relying on respondent's representations, clients were lulled into inaction with regard to the matter they had entrusted to the respondent and from seeking other counsel, and referring attorneys saw no reason to take an active part in filing or monitoring the progress of lawsuits on their clients' behalf. While respondent's

remarks may not have been fraudulent, they were blatant misstatements which created a false sense of security in those who heard them, and they were inaccurate representations of what the respondent had actually done. Respondent does not deny making many of these misleading statements. Whatever respondent's intent when he made them, the result was irreparable prejudice to his clients' rights.

The remaining question is the appropriateness of the recommended disciplinary sanction of suspension for two years. We do not agree with the Administrator that respondent's actions warrant disbarment. On the other hand, respondent was guilty of serious breaches of the responsibility he owed his clients and other attorneys, and we reject his suggestion that his conduct merits a lenient sanction such as censure or a very short suspension.

Culpable neglect of a client's affairs is misconduct sufficient to warrant disciplinary sanction. (*In re Chapman* (1983), 95 Ill.2d 484, 69 Ill.Dec. 940, 448 N.E.2d 852; *In re Levin* (1979), 77 Ill.2d 205, 32 Ill.Dec. 870, 395 N.E.2d 1374. *In re Ahern* (1961), 23 Ill.2d 69, 177 N.E.2d 197.) On many occasions, this court had found suspension to be an appropriate sanction for comparable neglect where corrupt motive and moral turpitude have not been shown. *In re Johnson* (1982), 93 Ill.2d 441, 445, 67 Ill.Dec. 114, 444 N.E.2d 153; *In re Levinson* (1978), 71 Ill.2d 486, 493, 17 Ill.Dec. 669, 376 N.E.2d 998; *In re Chapman* (1978), 69 Ill.2d 494, 501, 14 Ill.Dec. 479, 372 N.E.2d 675; *In re Taylor* (1977), 66 Ill.2d 567, 571, 6 Ill.Dec.898, 363 N.E.2d 845; *In re Ahern* (1961), 23 Ill.2d 69, 74, 177 N.E.2d 197.

Our attorney disciplinary proceedings are designed to safeguard the public and maintain the integrity of the legal profession. (*In re Levin* (1979), 77 Ill.2d 205, 211,

32 Ill.Dec. 870, 395 N.E.2d 1374.) In order that this court fulfill those goals, it is important that there be uniformity in the sanctions afforded to different attorneys (*In re Clayter* (1980), 78 Ill.2d 276, 283, 35 Ill.Dec. 790, 399 N.E.2d 1318), and also that each case be carefully evaluated on its own merits. *In re Hopper* (1981), 85 Ill.2d 318, 324, 53 Ill.Dec. 231, 423 N.E.2d 900.

Respondent here has been found guilty of six separate counts of neglect. We find a pattern of neglect and of misstatements sufficient to warrant more significant discipline than the hearing and review boards have recommended. We are mindful of the fact that respondent was previously suspended for three months for misconduct very similar to what we have in this case. It is a cause for concern that the court's previous discipline of the respondent did not result in sufficient changes in his behavior to prevent these later instances of neglect. Although respondent claims to have changed the nature of his practice dramatically in order to avoid similar difficulties, the major changes appear to have occurred at the time of the earlier disciplinary proceeding, and it appears that whatever changes were made did not prevent the incidents with which we are now concerned here. Therefore, we cannot consider the changes to be a significant mitigating factor arguing in favor of a short suspension. Bearing in mind respondent's earlier discipline and the number of instances of misconduct involved here, we believe that respondent should be suspended for three years and until further order of this court. Three years is a meaningful period of time which should be long enough both to impress upon respondent the shortcomings in the manner he has conducted his practice, and to allow him to take additional steps to insure that such events will not occur again if he resumes the practice of law.

Considering all of the circumstances of this case, we regard this disposition as consistent with the discipline awarded in other cases. In *In re Chapman* (1983), 95 Ill.2d 484, 69 Ill.Dec. 940, 448 N.E.2d 852, respondent was given a two-year probationary suspension for failure to prosecute an appeal. Like this respondent, Chapman had been previously suspended for three months, but that case is distinguishable, since Chapman's alcoholism was a factor in our decision. Further, we consider the pattern of neglect shown here in six separate instances plus the misstatements to be much more serious than the single instance of neglect proven in *Chapman*, and therefore to warrant a more severe sanction.

Our decision is consistent with the discipline in *In re Johnson* (1982), 93 Ill.2d 441, 67 Ill.Dec. 114, 444 N.E.2d 153. There, the attorney was suspended for one year for two counts of neglect involving the mishandling of a divorce and an estate. Similarly, in *In re Levinson* (1978), 71 Ill.2d 486, 17 Ill.Dec. 669, 376 N.E.2d 998, an attorney was suspended for six months for misconduct involving a single adoption proceeding. The neglect found here includes a greater number of instances, and for that reason alone, even without regard to the respondent's previous misconduct, calls for a longer suspension. The sanction imposed here is also justified by respondent's failure to satisfy the $10,000 judgment which Santillanes obtained against him, or to consummate his settlement with Mrs. Fouts by paying her the sum of $1,500 which he agreed upon.

On this record, we believe that the interests of the public, the legal profession and respondent would be best served by a suspension for three years and until further order of this court. In view of respondent's previous dis-

cipline, he will not be reinstated until this court is satisfied that he will not engage in similar misconduct in the future.

Respondent suspended.

UNDERWOOD, Justice, dissenting:

In my judgment, disbarment is the only appropriate discipline for attorneys who repeatedly engage in dishonest or deceitful behavior. This court has frequently stated that disbarment is warranted when the intentional misrepresentation which occurred here is established. (*In re Schneider* (1983), 98 Ill.2d 215, 224, 74 Ill.Dec. 500, 456 N.E.2d 2; *In re Hopper* (1981), 85 Ill.2d 318, 324, 53 Ill.Dec. 231, 423 N.E.2d 900; *In re Saladino* (1978), 71 Ill.2d 263, 276, 16 Ill.Dec. 471, 375 N.E.2d 102.) This is especially true when, as here, the misrepresentations are directed towards the attorney's clients and accompanied by other acts of misconduct. (*In re Feldman* (1982), 89 Ill.2d 7, 9-13, 59 Ill.Dec. 103, 431 N.E.2d 388; *In re Smith* (1979), 75 Ill.2d 134, 136-42, 25 Ill.Dec. 660, 387 N.E.2d 316; *In re Frey* (1976), 65 Ill.2d 130, 131-32, 2 Ill.Dec. 344, 357 N.E.2d 511.) The majority's suggestion that respondent's conduct was not fraudulent is clearly indefensible in light of our recent statement that fraud includes " '* * * anything calculated to deceive * * * whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth or by look or gesture.' " (*In re Armentrout* (1983), 99 Ill.2d 242, 251, 75 Ill.Dec. 703, 457 N.E.2d 1262.) Too, the court has always considered an attorney's prior discipline for similar conduct a critical factor in its decisions to disbar. *In re Nesselson* (1969), 43 Ill.2d 262, 253 N.E.2d 455; *In re Broverman* (1968), 40 Ill.2d 302, 239 N.E.2d 816.

As the majority observes, this is not a case like *In re Chapman* (1983), 95 Ill.2d 484, 69 Ill.Dec. 940, 448 N.E.2d 852, where an attorney was guilty of a single instance of neglect, and where alcoholism and illness were important mitigating factors. We deal here with an attorney who was undeterred by his prior discipline, who admits to serious and repeated neglect in the handling of his clients' cases, and who has irreparably prejudiced his clients' legal rights through misrepresentations and nondisclosures. Under these circumstances I do not believe any sanction short of disbarment will adequately protect the public or maintain the integrity of the legal profession.

THOMAS J. MORAN, J., joins in this dissent.

APPENDIX B

ILLINOIS SUPREME COURT
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June 4, 1984

Mr. William J. Harte
Attorney at Law
111 W. Washington, S#2025
Chicago, IL 60602

No. 58459—In re: Jack Levin. Disciplinary Commission.

The Supreme Court today DENIED the petition for rehearing in the above entitled cause.

The mandate of this Court will issue to the appropriate Appellate Court, Circuit Court or other Agency on June 11, 1984.

APPENDIX C

BEFORE THE HEARING BOARD
OF THE ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION
OF THE STATE OF ILLINOIS

IN THE MATTER OF:	)	
	)	
JACK LEVIN,	)	No. 81 CH 71
	)	
Attorney-Respondent	)	

REPORT AND RECOMMENDATION OF HEARING PANEL

INTRODUCTION

On August 25, 1981, the administrator of the Attorney Registration and Disciplinary Commission filed a six count complaint against the Respondent, JACK M. LEVIN, charging neglect of legal matters entrusted to the Respondent. Respondent filed an answer admitting most of the factual allegations of the complaint but denying the allegations of negligence.

The cause was heard before Hearing Panel Two on January 14 and 15, 1982, John M. Bowlus, Chairman, with Charley Popejoy substituting for Richard Smith, and Michael T. Caldwell substituting for Ward P. Fisher.

The administrator appeared by Jerome Larkin and John Holtaway. The Respondent appeared in person and was represented throughout the proceedings by Attorneys

William J. Harte and David J. Walker. After the conclusion of the two day hearing the matter was taken under advisement, pending a report and recommendation of the hearing panel.

PROCEDURAL MATTERS

The administrator's six count complaint was filed on August 5, 1981. The matter was assigned to Hearing Panel Two and set for hearing in the Chicago offices of the Attorney Registration and Disciplinary Commission on October 29, 1981, at 10:00 a.m.

On September 23, 1981, the administrator filed a motion for the entry of default for want of an answer, which was allowed on October 12, 1981. The production of further evidence in support of the complaint was excused.

On October 26, the Respondent by William J. Harte, his attorney, moved the panel to vacate the order of default, setting forth grounds of lack of sufficient time to make the necessary arrangements for the retention of counsel. The Respondent's motion was allowed and the cause was rescheduled for hearing on October 29, 1981. The hearing was continued from October 29, 1981, to January 14, 1982, due to the engagement in emergency litigation of Respondent's counsel.

At the time of the filing of the complaint, the administrator had also filed a request to admit facts and genuineness of documents, requesting admissions to the genuineness of 26 documents. Respondent admitted that all 26 documents were genuine. All but Exhibit 21 were received into evidence upon stipulation and without objection. Exhibit 21 was admitted into evidence over the objection of Respondent's counsel.

In addition to the 26 exhibits admitted by stipulation, the administrator called as witnesses, the Respondent (under Section 60 of the Civil Practice Act), Christina Gomez, Josephine Carrera, Manuel Santillanes, Grace Colon, Bernard Davis, Matilda Jane Nelson, Anne Fouts, Bernard Perry, Yvonne Perry, and David Feldman. Respondent testified in his own behalf and also called Attorney William Mattix [*sic*] as a character witness.

There were no motions directed to the pleadings and none were filed in any portion or point of the proceeding.

FACTS

During the period covered by the complaint, the Respondent was engaged in high volume plaintiff's personal injury practice, trying 25 to 30 cases per year to a verdict before a jury. Many of the cases were for relatively small amounts of money and many were difficult cases of contested, even questionable, liability. During the period in question, the Respondent accepted cases for Manuel Santillanes, Christina Gomez, Gerryl Monagain, Matilda Nelson, Anne Fouts, and Bernard and Yvonne Perry.

Manuel Santillanes

Manuel Santillanes, 2128 South Halsted Street, Chicago, is a 41 year old factory worker. In 1973 Santillanes was injured in an altercation with Sollo Fovela, at the Le Terrace Lounge, which was apparently co-owned by Edward Alarcon, and the assailant. Upon his release from the hospital following the incident, the complainant contacted the Respondent on the advice of a friend, Grace Colon. Santillanes signed what was apparently a retainer contract.

Respondent thereafter filed suit (administrator's exhibit 2) on Janury 16, 1975. Summons was issued upon the filing of suit and returned on January 22, 1975, as "not found." On April 28, 1977, the suit was dismissed for want of prosecution.

Santillanes testified that he had a total of two contacts with the Respondent, once when he retained him and once in July of 1978. At the second meeting, Santillanes stated he had asked the Respondent about progress on his case and was told by the Respondent that the Respondent was working on it. Later, Santillanes went to the Civic Center, checked the court file, and discovered that the case was "closed." Santillanes stated that the Respondent never told him the actual status of the case. Santillanes subsequently sued the Respondent for malpractice and recovered a judgment. The Respondent felt that the judgment was void because a jury had been waived by the Plaintiff on the default prove-up without notice to the Respondent.

CHRISTINA GOMEZ

Christina Gomez, age 20, 2109 South Halsted Street, Chicago, lived with her mother and brothers and sisters in an apartment at 1832 South Loomis Avenue. The building, located on Loomis and Blue Island, had one front entrance and three rear entrances because of its size. The third floor apartment where Christina Gomez lived was entered through the front only because there was no key to the rear door. Gomez went to the fourth floor apartment immediately above her and was going to gain entrance to her apartment through a window adjacent to a fire escape. Gomez, while on the fire escape, fell through a hole on the fire escape, got caught on a portion of the structure on the way down, and then the rest of the structure collapsed, throwing her to the ground.

Gomez's mother, Josephine Carrera, was referred to the Respondent by Grace Colon and retained the Respondent about two weeks after the accident. Later in 1975, Carrera retained Respondent again to represent her daughter after the daughter had been struck by a car. Respondent gave Carrera no information regarding the fire escape case between these two meetings. In 1979, when Carrera complaint to the Attorney Registration and Disciplinary Commission about the handling of her daughter's case, the Respondent returned the attorney's contract (administrator's exhibit 5). Suit was never filed. Respondent explained that he was not in the habit of filing suit quickly in minor's cases, preferring to wait until injuries had become fully resolved.

JARRYL MONAGAIN

On June 22, 1977, Jarryl Monagain was involved in an automobile accident resulting in extensive damage to his motor vehicle. A dispute arose between Monagain and his insurer over the repairability of the automobile and authority for the repairs. Attorney David Feldman was retained by Monagain and referred the case to Levin for handling in February of 1978. Respondent's file shows that between May 3, 1978, and March 14, 1980, Feldman wrote Respondent seven times without receiving a written response. Interspersed between these letters were telephone calls to the Respondent by Feldman, urging action on the case and requesting cooperation by the Respondent with the client. In one such telephone conversation shortly after the letter of October 25, 1978, Respondent advised Feldman that suit had been filed on Monagain's claim and that it was proceeding along. Feldman later checked the Clerk's file and discovered no suit on file. Subsequently, a meeting between Levin and Feldman was

scheduled so that Feldman could be brought up to date on all matters being handled by Levin on referral. Respondent failed to keep the appointment. Feldman finally filed suit for Monagain against Montgomery Ward to protect the claim against the statute of limitations.

MATILDA NELSON

Sometime between September 27, 1974, and January 16, 1975, Respondent substituted as counsel for Plaintiff, Matilda Neison, in a suit she brought for personal injuries and malicious prosecution arising out of an altercation that occurred in the book store of the Prairie State College on February 11, 1971. It appears as if Levin was the third attorney representing Nelson in that suit.

In January or February of 1977, Nelson conferred with Levin, apparently at the court house, regarding settlement. Levin inquired whether the complainant would be willing to accept a small amount of money, $500, in settlement. The complainant declined the offer saying that she wanted at least $1500 in settlement. Respondent excused himself, went to talk with the other side and returned with an offer to settle in the amount of $700 to $800. Complainant declined the settlement offer and the meeting ended.

Thereafter, although the complainant attempted to reach the Respondent by phone and in person, she never saw the Respondent again until she saw him in the hearing room.

At about the same time as the settlement discussions were taking place, Nelson's lawsuit was pending on a complaint and answer and a motion by the Defendant for summary judgment. Plaintiff was given leave to file an amended complaint on or before January 31, 1977, with an ordered

rule to "promptly . . . (serve) . . . a copy of said pleading . . ." upon counsel for the defendant. The amended complaint was filed unsigned on February 4, 1977, with the firm of Starke, Anglan, Wertz, and May, as counsel for the plaintiff. On February 4, 1977, pursuant to a notice of motion served on the Respondent, the Nelson case was dismissed for failure to comply with the previous court order.

Respondent testified that the only time subsequent to his meeting with the complainant at the court house that he heard from her was when she called him a couple of years later with a worker's compensation claim, which Respondent did not accept because she was a referral client of Attorney Charles May. Respondent assumed that Mr. May handled the new case. Respondent also claims to have filed the amended complaint, but was extremely vague about the details of such filing.

ANNE FOUTS

Anne Fouts, 4300 Lindenwood Drive, Matteson, Illinois, retained Attorney Bernard Davis in 1969, to file suit for damages arising from the intoxication and subsequent wrongful death of her husband, Peter Fouts, who died as a result of injuries received in an accident that occurred on January 28, 1968. After suit was filed in Will County, Illinois, in 1968, Davis referred the case to the Respondent for further handling.

In the summer of 1973, Mrs. Fouts and her brother in law met Respondent at the court house in Joliet for what was apparently a pre-trial conference. At the meeting Fouts rejected an offer of $1500 to settle the case and the conference adjourned. Between 1973 and 1978, Fouts tried to contact the Respondent on numerous occasions,

only occasionally being successful. On those occasions when Fouts was able to establish contact with Respondent, his response to her inquiries concerning her case were extremely general. Also during this period, Attorney Davis made several written inquiries of the Respondent regarding the status of the Fouts suit. All of these inquiries went apparently unanswered.

In the meantime, on September 12, 1974, the Fouts suit was dismissed for want of prosecution, on motion of the defendant's attorney. A motion to vacate the dismissal and set the case for immediate trial was filed in October, 1974, but does not appear to have been acted upon by the court. Two years later, in April of 1976, the Respondent was given leave to file a petition under Section 72 of the Civil Practice Act. In the meantime, pursuant to local rule, the case was set for a pre-trial conference. On September 27, 1976, the case was stricken from the jury list and the previous judgment allowed to stand because the Respondent had failed to file any pleadings.

Subsequently, Anne Fouts, sued Attorney Davis and the Respondent for malpractice. A $3,000 settlement was negotiated with Fouts' new attorneys. Davis paid his half of the agreed settlement out of his own pocket. At the time of the hearing, Respondent had agreed to pay his share of the $3,000 malpractice settlement but had not done so.

BERNARD PERRY and YVONNE PERRY

In 1974, Bernard Perry and Yvonne Perry filed suit for personal injuries in the Circuit Court of Cook County. Thomas Donnelly was their attorney. In a motion filed in the court file on May 19, 1978, it appeared that plaintiff's depositions were scheduled and rescheduled 13 times

between February 18, 1975, and April 25, 1978, the plaintiffs having failed to appear on the last mentioned date. On June 16, 1978, the case was dismissed for failure to comply with discovery.

Mr. and Mrs. Perry's first contact with Levin occurred on April 25, 1978, when they went to their attorney's, Jack Marino's, office, for their deposition. Levin told the Perrys that their deposition was scheduled to take place in Skokie, Illinois, and that they could not attend on that date. Another date was later suggested to the Perrys which they could not accommodate because Mr. Perry was starting new employment. Nothing further was heard by the Perrys regarding their case until after they had complained to the Attorney Registration and Disciplinary Commission. They later received a settlement in the amount of $1500.

JACK LEVIN

On his own behalf, the Respondent testified that he was having serious personal problems involving his family. During the period in question, he became estranged from his wife who filed for divorce and later moved to Florida. In addition, the Respondent's daughter was having serious mental health problems. It is contended by the Respondent that these family pressures contributed to his neglect of the cases in question. Respondent also indicated that for some time prior to the advent problems, the Respondent's practice was a high-volume plaintiff's personal injury practice. He handled hundreds of files annually; worked extremely long hours; worked 7 days a week, and frequently brought work home. The practice was comprised of cases taken directly by the Respondent from the client at the outset of the claim, cases referred to him at some

point during pendency by other attorneys, and cases referred to him specifically for trial. Many of the cases were of dubious liability and, apparently because of the number of such cases that he handled, Respondent developed a reputation for attempting, as one witness put it, "to turn garbage into gold." This high volume, demanding practice contributed, if not caused, (at least in the Respondent's judgment) the threatened disintegration of his family.

Respondent further stated that he has changed his practice drastically by refusing new cases and cases in process, accepting only cases on referral from other lawyers for trial. The Respondent also acknowledged that on one previous occasion he had been disciplined by the Supreme Court for neglect.

In addition, in his behalf, the Respondent called Attorney William Mattix [*sic*], a practicing lawyer in Chicago who testified to his knowledge of the Respondent and the Respondent's reputation. In the witnesses' opinion, the Respondent wa fit for continuance in the practice of law.

CONCLUSIONS

Between 1969 and 1979, Respondent represented the six complainants in some form or another. Manuel Santillanes and Christine Gomez were direct contacts recommended by a former client. Jarryl Monagain, Matilda Nelson, Anne Fouts and Bernard and Yvonne Perry were referred by other lawyers. Although all six complainants were personal injury or property damage referrals, in two cases the Respondent neglected to file suit. In the remaining four cases, suits, most of which were instituted by other lawyers, were dismissed for want of prosecution or other reasons. It is abundantly clear to the Panel that the

singular reason for the dismissals was the neglect of the Respondent. Santillanes' case was dismissed for failure to effect service. The remaining three dismissals were for procedural failures directly attributable to neglect of the Respondent; failure to promptly file an amended complaint (Nelson); failure to comply with a court order (Fouts); and failure to comply with discovery (Perry). While the Respondent offers two reasons for his non-performance of his professional duty, vis., a high volume intensely demanding practice and serious personal problems, neither of these facts of the Respondent's life excuses his conduct. Furthermore, neither does the relative lack of merit of any of the questioned cases offer an excuse for neglect.

The kindest evaluation that can be made of any of the six pertinent cases is that they are at best of questionable merit, with scant to non-existent chance of any substantial recovery. Nevertheless, the liability and collectability of each of these claims was readily apparent to the Respondent from the outset. Manual Santillanes was injured in a bar fight in which he may or may not have been an eager participant or aggressor. Even given liability, the likelihood of no recovery was apparent from the outset. While Christine Gomez may have had a decent claim, given the known history of these types of buildings in the Chicago area, the likelihood of unearthing a financially responsible property owner appeared remote. When an insurer appeared, albeit a shaky one, Respondent still did nothing.

The Monagain claim had a readily apparent outcome from the beginning. If the cost of repairs exceeded the value of the car, Respondent knew that the loss was limited to the wholesale value of the car, less the salvage. If repairable, the insurance company had the right to select the garage it deemed qualified to perform the re-

pairs. There is no mystery in this kind of claim and an attorney of the Respondent's experience in the tort field either knew it or should have known it.

The Fouts and Nelson cases were obviously, even from the pleadings, cases of extremely poor liability. Decedent Fouts was an intoxicated driver backing from a driveway when he was killed. Matilda Nelson was apparently an instigator in an incident over which she brought suit. She was never apparently arrested.

Finally, even if most of the discovery delays in the Perry case had been caused by the actions of persons other than the Respondent, the fact that there had been so many previously cancelled dates before the Plaintiffs' depositions demanded much more serious attention to securing a firm date for the depositions than the Respondent devoted to it.

The Panel implies no criticism of the Respondent for accepting cases of such adverse liability or apparently limited recovery. In fact, Respondent is to be commended for accepting such difficult cases for clients who would not ordinarily have had a day in court. However, once accepted, each of these cases is entitled to the same consideration as a similar case with good liability or a clear chance of recovery. Once cases are accepted, each of these clients is entitled to be treated with the same professional consideration as clients with good cases. One doubts that clients with good cases who were represented by the Respondent were similarly treated, otherwise, the number of complaints against the Respondent might have been considerably greater.

There is furthermore, no solace or comfort to be found in the fact that only six cases over a ten year period resulted in a complaint when the Respondent was han-

dling literally hundreds, maybe even thousands of cases during this period. If the six cases in question are in any way representative of the Respondent's practice, the six cases may be merely the tip of an enormous iceberg comprised of questionable cases for hundreds of unsophisticated clients.

No doubt exists in the mind of the Panel that during the heart of the period involved the Respondent was embroiled in serious, substantial marital and family problems. Whether these problems were caused wholly or partly by the nature of the Respondent's practice is largely academic. The fact of the matter remains that the Respondent had a professional obligation to promptly do something with these cases, whether that was referring the cases back to the lawyer who referred them to the Respondent in the first place, referring the cases to other counsel, or returning the retainer contracts to the clients, or even taking some direct action to bring them to a satisfactory conclusion. It is undoubted that the personal problems of the Respondent may be part of the reason for his inaction on the cases. However, those problems cannot excuse the deviation of the Respondent from required professional standards.

FINDINGS

1) Jack Levin was admitted to practice in the State of Illinois in 1959.

2) That he accepted the case of Manuel Santillanes from the client directly in 1975; filed suit but failed to effect service on the defendant, resulting in the dismissal of the case for want of prosecution.

3) That he accepted a contract of employment on behalf of Christina Gomez and failed to take any substantial legal action on that claim.

4) That he accepted a referral of the claim of Jarryl Monagain in 1977 and failed to take any substantial action on that claim.

5) That he accepted the referral of the claim of Matilda Nelson and failing to negotiate a settlement acceptable to the client, failed to comply with orders of the court respecting an amended complaint, resulting in the dismissal of the case for want of prosecution.

6) That the Respondent accepted the referral of the case of Anne Fouts, and failing to negotiate a settlement of the case satisfactory to the client, allowed the case to be dismissed for want of prosecution for failure to comply with local pre-trial rules.

7) That the Respondent accepted the referral of the cases of Bernard Perry and Yvonne Perry and failed to exercise diligence in complying with discovery, resulting in the dismissal of the cases.

8) That in each of these instances, the neglect of the Respondent was further aggravated by almost total lack of substantial communication with the clients.

9) That the Respondent has been guilty of neglect, conduct resulting in prejudice to his clients, and others and failing to carry out contracts of employment in violation of DR 6-101 (a) (3), 7-101 (a) (1) (2) (3).

10) That the Respondent, while guilty of a complete failure to communicate with his clients, has not been guilty of dishonesty, fraud, deceit, or misrepresentation, as contemplated by DR 1-102 (a) (4), or as charged in the complaint.

11) That the Respondent was previously suspended from the practice of law for three months for neglect. That the Respondent's failure as outlined above may have

been due in part to the voluminous high pressure nature of his practice and serious personal problems.

12) That notwithstanding any reasons advanced by the Respondent for his conduct, the conduct of the Respondent represents a substantial departure from an acceptable standard of professional conduct, and in light of his previous misconduct, warrants discipline.

13) That the evidence does not support the administrator's requested discipline of disbarment.

14) That the evidence warrants the imposition of discipline of suspension for a definite period of time.

RECOMMENDATION

It is the recommendation of the Hearing Panel that the Respondent, JACK M. LEVIN be suspended from the practice of law for a period of two (2) years.

Respectfully submitted,

HEARING PANEL TWO

/s/ John M. Bowlus
Chairman

/s/ Charley Popejoy

/s/ Michael T. Caldwell

APPENDIX D

BEFORE THE REVIEW BOARD OF
THE ILLINOIS ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION

Administrator's No. 81-CH-71

In the Matter of:
JACK LEVIN,
Attorney-Respondent.

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

The matter comes before the Review Board on the recommendation of the Hearing Board that the Respondent, Jack M. Levin, be suspended from the practice of law for a period of two years.

The request by the Administrator for leave to supplement the record is denied. After full consideration and review of all matters of record, the Review Board affirms the Hearing Board's recommendation that the Respondent, Jack M. Levin, be suspended from the practice of law for a period of two years.

The report and recommendation of the Hearing Board is attached hereto.

Respectfully submitted,

L. Michael Getty, Chairman
Herbert J. Bell
Chester L. Blair
C. William Fechtig
Watts C. Johnson
Marshall A. Susler

Chester L. Blair recommends that the Respondent be suspended for a period of one year.

Members Richard L. Kahn, John Cadwalader Menk and Martin L. Silverman did not participate.

This matter decided February 25, 1983.